

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Ted D. Ellis and Teresa Ellis,)	C/A No.: 9:19-cv-2163-RMG-MGB
)	
Plaintiffs,)	
)	
v.)	
Cody C. Kirkman, Individually;)	
Amber Swinehammer,)	
Individually; Lindsey Gibson,)	
Individually; Cody C. Kirkman,)	
Amber Swinehammer, and)	
Lindsey Gibson, as Agents/)	
Officers of Town of Bluffton)	
Police Department; and Town of)	
Bluffton Police Department,)	
)	
Defendants.)	
_____)	

TO: Arie Bax, Attorney for Plaintiffs

**DEFENDANTS' MOTION TO STAY ALL ACTIVITY IN
THE INSTANT MATTER FOR
NO LESS THAN 90 DAYS**

Defendant Cody C. Kirkman, with the joinder of remaining Defendants, by and through his undersigned counsel, respectfully moves this Court, in accordance with the provisions of Federal Rules of Civil Procedure Rule 26(b), to stay all activity in the instant matter for a period of no less than 90 days. Officer Kirkman so moves in light of an on-going and parallel criminal investigation into the events which form the basis of the causes of action put forth by Plaintiffs in their Complaint. The remaining named Defendants join this Motion. The ongoing criminal investigation by federal authorities severely limits the officers' ability to properly participate in the litigation of the civil matter. This motion is

needed to safeguard the officers' rights against self-incrimination secured by the Fifth Amendment of the United States Constitution.

As further demonstrated in the filed Affidavit of undersigned Civil Defense Counsel Scott with relevant Exhibits thereto¹, to include letters of the Investigating Authority and letters of the Officer Kirkman's Criminal defense counsel, and in the accompanying Memorandum in Support, the parallel criminal investigation prohibits these named Defendants meaningful participation in the civil suit and any forced participation severely damages their Constitutional rights and protections in the criminal matter.

As such, Officer Kirkman, joined by the remaining Defendants, respectfully submits that the on-going, parallel criminal investigation by federal authorities profoundly limits their ability to properly participate in the litigation of the instant matter and a stay is mandated by the interests of justice.

¹ Affidavit of Counsel Scott with Exhibits A- H, was filed in support of Defendants' Opposition to Motion to Exclude Expert and was drafted to Support both Motions. (see, EFC No. 32-1 through 32-8).

Respectfully submitted.

LAW OFFICES OF CHRISTY L. SCOTT, LLC

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ATTORNEY FOR DEFENDANTS

Cody C. Kirkman, Individually and as an Officer of Town of Bluffton Police Department; Amber Swinehamer, (mistakenly spelled Swinehammer), Individually and as an Officer of Town of Bluffton Police Department; Lindsey Gibson, sued individually and as a former police officer of the Bluffton Police Department, and the Town of Bluffton Police Department

September 30, 2020

Walterboro, South Carolina

Certification of Consultation

Although this Motion is exempted from the consultation requirements of Paragraph 3 of the Scheduling Order and Local Rule 7.02 (D.S.C.), prior to filing this Motion, Defendants engaged in consultation with opposing Counsel by letter/email on September 3, 2020 and through a telephone conference with Mr. Bax on September 22, 2020, but Plaintiff is unable to consent to same.

By: s/Christy L. Scott
Christy L. Scott, Federal ID No. 6215